



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 152 3181]

Lord & Taylor, LLC; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before April 14, 2016.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/lordtaylorconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Lord & Taylor, LLC - Consent Agreement; File No. 152- 3181” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/lordtaylorconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Lord & Taylor, LLC - Consent Agreement; File No. 152- 3181” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary,

Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, Attorney, (202) 326-3740, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 15, 2016), on the World Wide Web at:
<http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 14, 2016. Write “Lord & Taylor, LLC - Consent Agreement; File No. 152- 3181” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or

foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/lordtaylorconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Lord & Taylor, LLC - Consent Agreement; File No. 152- 3181” on your comment and on the envelope, and mail your comment to the

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 14, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from Lord & Taylor, LLC ("Lord & Taylor").

The proposed consent order ("proposed order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves Lord & Taylor's use of paid spokespersons to promote, in social media, its private label line, "Design Lab," an apparel collection aimed at women ages eighteen to thirty-five. The Commission's complaint alleges that Lord & Taylor paid fifty fashion influencers to wear and simultaneously post on Instagram photos of a particular Design Lab item

– the Paisley Asymmetrical Dress. In most instances, the Instagram post did not mention any connection between the influencer and Lord & Taylor. The complaint also alleges that Lord & Taylor sponsored an article, also featuring the dress, that appeared to be an independent and objective review of the Design Lab collection in an online fashion magazine. The article did not disclose the connection between Lord & Taylor and the magazine. The complaint alleges that Lord & Taylor violated Section 5 of the FTC Act by misrepresenting that the Instagram images and captions reflected the independent statements of impartial fashion influencers, when, in fact, the postings were created as part of an advertising campaign for Lord & Taylor. The complaint further alleges that Lord & Taylor violated Section 5 by failing to disclose that the fashion influencers were paid endorsers. Finally, the complaint alleges that that Lord & Taylor misrepresented that the article that appeared on the fashion magazine website and the Design Lab posting on the magazine’s Instagram account were independent statements or opinions regarding the launch of the Design Lab collection when, in fact, the article and posting were paid commercial advertising.

The proposed order includes injunctive relief to address these alleged violations and requires Lord & Taylor to follow certain monitoring and compliance procedures related to its use of paid spokespersons or endorsers.

Part I of the proposed order prohibits Lord & Taylor, in connection with the advertising of any product or service, from misrepresenting that an endorser of such product or service is an independent user or ordinary consumer of the product or service.

Part II of the proposed order requires Lord & Taylor, in connection with the advertising of any product or service by means of an endorsement, to disclose clearly and conspicuously,

and in close proximity to the representation, a material connection, if one exists, between the endorser and Lord & Taylor.

Part III of the proposed order prohibits Lord & Taylor from misrepresenting that paid commercial advertising is a statement or opinion from an independent or objective publisher or source.

Part IV of the proposed order sets out certain monitoring and compliance obligations that Lord & Taylor must meet with respect to any endorser with a material connection to Lord & Taylor, including: obtaining signed acknowledgements from such endorsers that they will disclose their connection to Lord & Taylor; monitoring the endorsers' representations and disclosures; maintaining records of its monitoring efforts; and terminating endorsers who fail to disclose their connection to Lord & Taylor; provided, however, that if Lord & Taylor reasonably determines that an endorser's failure to disclose was inadvertent, it may provide an endorser with one notice of the failure to disclose and an opportunity to cure the disclosure prior to termination.

Parts V through VIII of the proposed order require Lord & Taylor to: keep copies of advertisements and promotional materials containing the representations or endorsements, contracts with endorsers and communications regarding disclosures required by Part II of the proposed order, relevant consumer complaints and inquiries, and documents demonstrating order compliance; provide copies of the order to officers, employees, and others with responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part IX of the proposed order provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

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